

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

NOV 06 1998

STATE COMMITTEE OF PSYCHOLOGISTS,  
3605 Missouri Boulevard  
Jefferson City, MO 65102

Petitioner,

v.  
JOHN O'BRIEN, Ph.D.  
4239 Chippewa Street  
St. Louis, MO 63116-2607

Respondent.

DEPARTMENT OF  
PROFESSIONAL  
REGISTRATION

No. 98-001092PS

ADMINISTRATIVE HEARING  
COMMISSION

MOTION TO DISMISS AND SETTLEMENT AGREEMENT

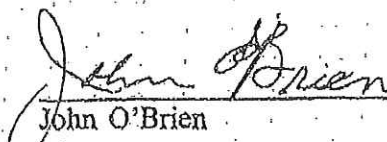
Petitioner, State Committee of Psychologists, by and through its attorney, Attorney General Jeremiah W. (Jay) Nixon, and Assistant Attorney General Kimberly Gibbens, and Respondent, John O'Brien, by and through his attorney, Keith Liberman, respectfully request that this Commission dismiss the above-styled case pursuant to the following settlement agreement:


1. Petitioner agrees to dismiss the above-styled case with prejudice. The allegations contained in the complaint filed with the Administrative Hearing Commission in this case will not be the subject of any further disciplinary action against the Respondent's Psychologist license No.: PY00331.
2. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs



and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Litigation, or from the negotiation or execution of this Settlement and Release Agreement.

## RESPONDENT

  
John O'Brien date



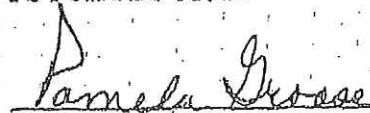
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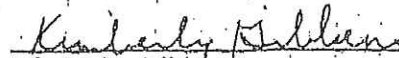
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Attorney for Respondent

STATE COMMITTEE OF  
PSYCHOLOGISTS

 11-5-98  
Pamela Groose date  
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Attorneys for Petitioner



BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

RECEIVED

JUL 26 1995

STATE COMMITTEE  
OF PSYCHOLOGISTS

STATE COMMITTEE OF PSYCHOLOGISTS,  
3605 Missouri Boulevard  
Jefferson City, MO 65102,

Petitioner,

v.

No.

JOHN E. O'BRIEN  
4239 Chippewa Street  
St. Louis, MO 63116-2607,

Respondent.

JOINT STIPULATION OF FACTS, WAIVER OF HEARING  
BEFORE THE ADMINISTRATIVE HEARING COMMISSION AND  
STATE COMMITTEE OF PSYCHOLOGISTS AND CONSENT ORDER  
WITH JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (1 CSR 15-2.450(1)) and pursuant to the terms of § 536.060, RSMo 1994, as it is made applicable to the Administrative Hearing Commission by § 621.135, RSMo 1994, the parties waive the right to a hearing of the above-styled case by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the State Committee of Psychologist under § 621.135, RSMo 1994, and jointly stipulate to the facts and consent to the imposition of disciplinary action against the psychologists license of Respondent for violations of statutes set forth below.



Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by the State Committee of Psychologists in this case and the parties submit to the jurisdiction of the Administrative Hearing Commission.

The Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the complaint served upon him by the Administrative Hearing Commission prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against Respondent; and the right to a ruling on questions of law by an administrative hearing commissioner. Being aware of these rights provided the Respondent by operation of law, the Respondent, John E. O'Brien, knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing Before the Administrative Hearing Commission and State Committee of Psychologists and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and agrees to abide by the terms of this document as they pertain to Respondent.



Based upon the foregoing, the Petitioner and the Respondent jointly stipulate to the following and request that the Administrative Hearing Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Administrative Hearing Commission's Findings of Fact and Conclusions of Law:

#### JOINT PROPOSED FINDINGS OF FACT

1. The State Committee of Psychologists (the "Committee") is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo 1994, for the purpose of executing and enforcing the provisions of Chapter 337, RSMo.

2. John E. O'Brien, Respondent, is licensed by the Committee as a psychologist, License No. PY00305. The Respondent's Missouri license is current and active.

3. Effective April 26, 1993, Respondent's employment as Associate Psychologist II with the Division of Classification and Treatment was terminated. Respondent appealed the dismissal to the Personnel Advisory Board of the State of Missouri. The Personnel Advisory Board approved the dismissal of Respondent.

4. Respondent was employed by the Division of Classification from on or about March 2, 1987 until April 26, 1993.

5. Respondent's conduct which resulted in his termination from employment with the Division of Classification violates §337.035, RSMo., and constitutes cause for discipline of Respondent's psychologist's license.



6. Respondent permitted an inmate to remain in his office after yard closing time on October 26, 1992, December 2, 1992, and February 25, 1993, in violation of the policies and procedures of his employer.

7. Respondent was counseled by his employer on September 9, 1992 for allowing an inmate to maintain in his possession psychological tests of other inmates, answer keys and psychological interpretation materials.

8. Despite such counseling, on March 9, 1993, testing materials, psychological interpretative materials and a note from Respondent authorizing the inmate to maintain such materials were found in the inmate's cell.

9. From at least September 9, 1992, until at least March 9, 1993, Respondent allowed the inmate to review confidential psychological tests of other inmates and further allowed such inmate to attempt to score and interpret psychological tests of other inmates.

10. Encouraging or promoting use of psychological assessment materials and techniques by an unqualified person violates acceptable standards of practice for psychologists.

11. The inmate was not licensed, credentialed, or otherwise qualified to provide psychological services, including scoring and interpreting psychological tests.

12. Psychological tests, scores and interpretations of tests of particular individuals are confidential and shall not be disclosed to third parties without the prior written consent of the client.

13. In April, 1992, Respondent allowed the inmate to attend and observe



sessions with other inmates without first obtaining written consent of such inmates in violation of acceptable psychology practice.

14. On or about October 27, 1992, Respondent failed to report to appropriate staff members that an inmate expected to be assaulted, thus placing the health and safety of the inmate at risk.

15. Respondent's conduct in failing to report to appropriate staff members that an inmate expected to be assaulted violated a professional trust or confidence due the inmate, Respondent's colleagues and employer.

16. Failure to adhere to the policies and procedures of one's employer violates a professional trust or confidence due such employer and colleagues.

17. The Personnel Advisory Board determined that Respondent was insubordinate, inadequate, careless and inefficient in performing his duties and that dismissal was for good cause.

## II

### JOINT PROPOSED CONCLUSIONS OF LAW

18. 4 CSR 235-5.030 (1) (A), (B), (C) and (D) provide:

(1) General Principles.

(A) Purpose. The ethical rules of conduct constitute the standards against which the required professional conduct of a psychologist is measured.

(B) Scope. The psychologist shall be governed by these ethical rules of conduct whenever providing psychological services in any context. These ethical rules of



conduct shall apply to the conduct of all licensees and applicants, including the applicant's conduct during the period of education, training and employment which is required for licensure. The term psychologist, as used within these ethical rules of conduct, shall be interpreted accordingly whenever psychological services are being provided in any context.

(C) Responsibility for Own Actions. The psychologist, when functioning as a licensed psychologist, shall be fully responsible for his/her own professional decisions and professional actions.

(D) Violations. A violation of these ethical rules of conduct constitutes unprofessional conduct and is sufficient reason for disciplinary action or denial of either original licensure, reinstatement or renewal of licensure.

19. Respondent's conduct as set forth herein and as demonstrated by the findings of the Personnel Advisory Board violates the Ethical Rules of Conduct set forth 4 CSR 235-5.030 (7) (B) (C), (12) (B), which were in effect at all times relevant hereto:

4 CSR 235-5.030 (7)(B):

Safeguarding Confidential Information.

The psychologist shall safeguard the confidential information obtained in the course of practice, teaching, research or other professional duties.

4 CSR 235-5.030 (7) (C):

Disclosure of Confidential Information:

The psychologist shall disclose confidential information to others only with the informed written consent of the client with the expectations as set forth here.

4 CSR 235-5.030(12)(B):

Delegating Professional Responsibility.

The psychologist shall not delegate professional



responsibilities to a person not qualified and/or not appropriately credentialed to provide those services.

20. Cause exists for discipline against Respondent's psychology license for violation of §337.035.2 (5), (13) and (15), RSMo, Supp. 1992 which provide:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

(5) Incompetency, misconduct, gross negligence, . . . in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(13) Violation of any professional trust or confidence;

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state.

### III

#### DISCIPLINARY ORDER

In light of the foregoing stipulation of facts, Respondent and the Committee hereby consent and agree to the following disciplinary action to be imposed against License No. PY00331 effective the date the Administrative Hearing Commission enters its order.

1. By agreement of the parties, License No. PY00331 of John E. O'Brien, is placed on probation for a period of five (5) years under the following terms and



conditions:

- A. Respondent must complete two professional education courses on the topics of ethics and psychotherapy approved by the State Committee of Psychologists. Such course must be taken in a department of psychology from a regionally accredited university for graduate credit of no less than three (3) semester hours or 45 CEU credits. The Respondent must obtain a grade of B or higher in the course. Reading courses, correspondence courses or independent study courses are unacceptable.
- B. During the probationary period, Respondent's must inform Respondent's employers, and all hospitals institutions, and managed health care organizations with which Respondent is affiliated, that Respondent's work as a professional psychologist is under probation by the State Committee of Psychologists. Respondent must obtain written verification that each patient/client that Respondent treats, evaluates, or consults has been so informed.
- C. During the probationary period, Licensee's practice as a professional psychologist shall be supervised on a weekly basis by a psychologist approved by the State Committee of Psychologists. If Licensee has failed to secure a supervisor within twenty (20) business days from the start of probation the Licensee shall cease practicing psychology until a supervisor is secured. Licensee shall be responsible for any payment associated with



the supervision. Supervision includes, but is not limited to, weekly onsite face-to-face review of cases, and review, of written reports such as case notes, intake assessments, test reports, treatment plans, and progress reports.

D. In the event the supervising psychologist becomes unable or decides not to continue serving in his/her capacity as a supervising psychologist or otherwise ceases to serve as a supervising psychologist during the period of probation, then, the Licensee shall:

- a) within three (3) business days of being notified of the supervising psychologist's inability or decision not to continue serving as the supervising psychologist, or otherwise learning of the need to secure a supervising psychologist, advise the State Committee of Psychologists in writing that he/she is needing to secure a supervising psychologist and the reasons for such change; and
- b) within twenty (20) business days of being notified of the supervising psychologist's inability or decision not to continue serving as the supervising psychologist, or otherwise learning of the need to secure a supervising psychologist, secure a supervising psychologist pursuant to and in accordance with the terms and conditions set forth in this agreement. After twenty (20) business days, the Licensee shall not practice if he or she has not secured a supervisor.



- E. The supervising psychologist shall be vested with administrative authority over all matters affecting the provision of psychological health services provided by Licensee so that the ultimate responsibility for the welfare of every client is maintained by the supervising psychologist.
- F. Respondent may not serve as a supervisor for any psychological trainee, psychological intern, psychological resident, psychological assistant, or any person undergoing supervision during the course of obtaining licensure as a psychologist, professional counselor, or social worker.
- G. Respondent must keep the State Committee of Psychologists apprised at all times, in writing, of Respondent's current home and work addresses and telephone numbers.
- H. Respondent is required to pay to the State Committee of Psychologists, in a timely fashion, all requisite fees required by law to renew and keep current Respondent's psychology license in Missouri.
- I. Respondent is required to comply with all provisions of Chapter 337, RSMo, the rules and regulations duly promulgated by the State Committee of Psychologists and state and federal criminal laws.
- J. Respondent must provide periodic reports of Respondent's compliance with this agreement every three (3) months.
- K. At Respondent's expense, Respondent must agree to meet with the State Committee of Psychologists at reasonable intervals designated by the



Committee.

2. Upon the expiration of the disciplinary period, the Respondent's license as a psychologist in Missouri shall be fully restored, provided all provisions of this agreement and all other requirements of law have been satisfied.

3. If the State Committee of Psychologists determines that the Respondent has violated a term or condition of his discipline, or has otherwise failed to comply with the provision of Chapter 337, RSMo, which violation would be actionable in a proceeding before the State Committee of Psychologists or the Administrative Hearing Commission or a Circuit Court, the State Committee of Psychologists may elect to pursue any lawful remedies or procedures afforded to it, and is not bound by this agreement and its selection of remedies concerning such violation.

4. The parties to this Stipulation understand that the State Committee of Psychologists will maintain this Stipulation as an open record of the Committee as provided in Chapter 337, 610, and 620 RSMo.

RESPONDENT

STATE COMMITTEE OF  
PSYCHOLOGISTS

\_\_\_\_\_  
John E. O'Brien                      date

\_\_\_\_\_  
Mildred Robertson                      date  
Executive Director

\_\_\_\_\_  
Penney R. Rector                      date  
Assistant Attorney General